

IN THE SUPREME COURT OF MISSOURI

IN RE ANCILLARY ADVERSARY)	
PROCEEDING QUESTIONS:)	
State Treasurer, Nancy Farmer,)	
)	
Appellant,)	
)	
v.)	SC84210
)	
Julie Smith, Receiver, Deborah Cheshire,)	
Cole County Circuit Clerk and)	
and the County of Cole,)	
)	
Respondents.)	

Appeal from the Cole County Circuit Court
Nineteenth Judicial Circuit
The Honorable Ward B. Stuckey

BRIEF OF RESPONDENT COLE COUNTY CIRCUIT CLERK

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**ATTORNEYS FOR RESPONDENT
COLE COUNTY CIRCUIT CLERK**

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Jurisdictional Statement

The trial court determined that section 447.575 and 447.532, RSMo, giving the Treasurer the power to bring an action to collect unclaimed property from the courts, is an unconstitutional delegation of authority under Article IV, § 15 of the Missouri Constitution. The trial court held that such an action under the statute would exceed the limits placed on the duties of the state treasurer by Article IV, § 15. This case therefore involves the validity of the Missouri Uniform Disposition of Unclaimed Property Act and the construction of a state constitutional provision dealing with the duties of the state Treasurer. Article V, § 3 of the Missouri Constitution grants this Court exclusive jurisdiction to hear such matters.

Statement of Facts

Respondent Cheshire adopts the Statement of Facts set forth or to be set forth in the Briefs of Respondent Receiver Julie Smith and Respondent County of Cole and offers the following additional facts:

1. On July 20, 2001, an Order was signed in this case creating the "Ancillary Adversary Proceedings," making Deborah Cheshire, as Circuit Clerk of Cole County (hereinafter "Respondent Cheshire"), a party to these proceedings and giving her thirty (30) days to assert any claims she may have to the funds administered in this receivership. (L.F. 399-402).

2. Certain "Ancillary Adversary Proceedings Questions" were also certified for decision by the Court. (L.F. 399-402).

3. On September 20, 2001, Respondent Cheshire filed her claim in this case and stated her position on the "Ancillary Adversary Proceedings Questions." (L.F. 448-465).

4. The Order and Judgment of November 27, 2001 in this case effectively resolved Respondent Cheshire's claim and rendered moot other issues she had raised. (L.F. 585-587).

5. Neither the Appellant Treasurer nor any other party has made any assessment or claim in this or any other proceeding directly against Respondent Cheshire relating to any funds she has received, administered or otherwise handled.

Point Relied On

III

THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE INTEREST FROM THE FUND MAY BE DISBURSED AND USED AS PROVIDED IN SECTION 483.310.2, RSMO, BECAUSE SECTION 483.310.1 DOES NOT PRECLUDE DISBURSEMENTS OF INTEREST IN ACCORDANCE WITH SECTION 483.310.2 IN THAT SECTION 483.310.1 IS NOT MANDATORY FOR THE ADMINISTRATION OF FUNDS PAID INTO THE COURT REGISTRY AND IN THAT RULE 68.02 OF THE MISSOURI RULES OF CIVIL PROCEDURE PERMITS THE ESTABLISHMENT OF A RECEIVERSHIP WITH THE INCORPORATION OF SECTION 483.310.2 INTEREST DISBURSEMENT PROVISIONS.

Mo. R. Civ. P. 68.02

7, 9, 11, 12

Mo. REV. STAT. § 483.310 (2000)

7, 9-12

Argument

A. Notice of Concurrence

To avoid duplication of efforts and repetition, Respondent Cheshire concurs in the Brief filed or to be filed by the Respondent Receiver in the present appeal with regard to Points I, II, IV, V, VI, VII, VIII, IX and X. Respondent Cheshire further concurs in the Brief filed or to be filed by the Respondent County of Cole with regard to Point III. Respondent Cheshire's argument on Point III is set forth below.

B. Standard of Review

The issues in Appellant's Point III were brought before the Court by virtue of the Respondent Receiver's Motion for Judgment on the Pleadings. (L.F. 471-472).

On appeal from the grant of a motion for judgment on the pleadings, this court will review the allegations of the non-movant's petition to determine if the facts pled therein are insufficient as a matter of law. The moving party admits, for purposes of the motion, the truth of all well pleaded facts in the opposing party's pleadings. The moving party's position for judgment on the pleadings is similar to that of a movant on a motion to dismiss, i.e., assuming the facts pleaded by the opposite party to be true, these facts are nevertheless insufficient as a

matter of law. A trial court's grant of a motion for judgment on the pleadings is proper if, from the face of the pleadings, the moving party is entitled to a judgment as a matter of law.

Felling v. Giles, 47 S.W.3d 390, 393 (Mo. App. E.D. 2001) (citations omitted).

The Court should affirm if there is any ground sufficient to sustain the judgment.

Id. The Court is not limited to the grounds relied on by the trial court. *Id.*

This Court reviews *de novo* the trial court's rulings on questions of law.

Armstrong v. Cape Girardeau Physician Associates, 49 S.W.3d 821, 825 (Mo. App. E.D. 2001).

C. Point III Argument

The trial court did not err in holding that the interest from the fund may be disbursed and used as provided in section 483.310.2, RSMo, because section 483.310.1 does not preclude disbursements of interest in accordance with section 483.310.2 in that section 483.310.1 is not mandatory for the administration of funds paid into the court registry and in that Rule 68.02 of the Missouri Rules of Civil Procedure permits the establishment of a receivership with the incorporation of section 483.310.2 interest disbursement provisions.

The Appellant's entire argument on its Point III hinges on the notion that section 483.310.1 is mandatory if a party makes application pursuant to that

subsection or if the receivership is established by an order containing findings on issues cited in section 483.310.1. This notion is incorrect.

Section 483.310.1, RSMo, states:

Whenever any funds . . . are paid into the registry of any circuit court and the circuit court determines, upon its own findings or after application by one of the parties, that such funds can reasonably be expected to remain on deposit for a period sufficient to provide income through investment, the court may make an order directing the clerk to deposit such funds as are described in the order in savings deposits in banks, savings and loan associations, [etc.] Necessary costs, including reasonable costs for administering the investment, may be paid from the income received from the investment of the trust fund. The net income so derived shall be added to and become part of the principal.

Mo. Rev. Stat. § 483.310.1 (2000).

Section 483.310.2 indicates that if there is no application by one of the parties, "the clerk may invest funds . . . and the income derived therefrom may be used by the clerk. . ." for certain listed expenses "and other expenditures of the circuit clerk's office, and the balance, if any, shall be paid into the general revenue fund of the county"

Appellant contends that if an application is made pursuant to section 483.310.1, registry funds can only be invested pursuant to that subsection and that the section 483.310.2 interest use provisions cannot apply. (Appellant's Brief, p. 43-44). Appellant further argues that section 483.310.2 cannot apply because the Clerk did not make the investments in this case or play a role in the administration of the funds. (Appellant's Brief, p. 43-44).

Appellant incorrectly assumes that section 483.310.1 is somehow mandatory simply by virtue of a request by a party under that subsection for investment of registry funds or the fact that the receivership order contains findings in line with that subsection. The language of section 483.310.1 indicates the contrary. "[T]he court may make an order directing the clerk to deposit such funds" Mo. Rev. Stat. § 483.310.1 (2000) (emphasis added). This language also indicates that this subsection is not necessarily the exclusive means to establish and administer a receivership.

Rule 68.02(a) of the Missouri Rules of Civil Procedure allowed the circuit court to appoint a receiver "to keep, preserve and protect . . . money or other thing[s] deposited in court . . . to the extent and in the manner that the court may direct" (emphasis added). Rule 68.02 empowered the Court to establish the receivership in the present case and to direct how the deposit funds would be administered.

The Court established the receivership in this case clearly pursuant to Rule 68.02. The Court specifically referenced Rule 68.02 as the authority for its orders creating the receivership (L.F. 76, 231), whereas the Court does not mention section 483.310.1. Given that nothing in section 483.310.1 indicates that it is the mandatory or exclusive means for handling court registry fund investments, Rule 68.02 is a permissible alternative.

Appellant makes no argument that Missouri law otherwise prohibits the Court from incorporating by reference the interest use provisions of section 483.310.2 into its Rule 68.02 receivership order. The existence of section 483.310.2 indicates a clear legislative intent that interest on court registry funds invested under receivership administration can be used for purposes of the Clerk's office, with the remainder to the County. Incorporation of these provisions into a Rule 68.02 receivership order therefore is not contrary to Missouri law.

Conclusion

Based on the foregoing, this Court should affirm the trial court's Order and Judgment of November 27, 2001 in this case.

Respectfully submitted,

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COLE COUNTY CIRCUIT CLERK**

Certificate of Compliance

The undersigned hereby certifies that the foregoing Brief complies with the provisions of Rule 84.06(b) and (c) and that:

- (A) This Brief contains 2,063 words, as calculated by Microsoft Word;
 - (B) A copy of this Brief is on the attached 3.5" disk; and
 - (C) This disk has been scanned for viruses by counsel's anti-virus program and is free of any viruses.
-

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing Brief of Respondent Cole County Circuit Clerk and one 3.5" disk containing this Brief were sent via first class mail, postage prepaid on this ____ day of May, 2002, to:

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